

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/15/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
V. Felix
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
JUDGE THOMPSON

MINUTE ENTRY

I. Background

Following her verified statement of election contest, Plaintiff Kari Lake filed a verified petition to inspect ballots pursuant to A.R.S. § 16-677(B). She then filed an amended verified petition expanding the scope of her inspection request. Defendant Maricopa County filed responses to both the original and amended verified petitions, to which Plaintiff filed a reply. Defendant Secretary of State Katie Hobbs filed a separate objection to the verified amended petition but joins the County's arguments. Katie Hobbs also filed a response in her capacity as election contestee.

The court has considered the original and verified petitions, Maricopa County's responses, the Secretary's objection and her response, and Plaintiff's reply.

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II. Sufficiency of Petition

Plaintiff requests the following inspection items pursuant to A.R.S. § 16-677(B):

- 1) Fifty randomly selected “ballot-on-demand” (BOD) printed ballots cast on Election Day from six vote centers in Maricopa County chosen by her representative,
- 2) Fifty randomly selected early ballots cast in the 2022 general election from six separate Maricopa County batches chosen by her representative,
- 3) Fifty randomly selected early ballot envelopes for early ballots cast in Maricopa County in the 2022 general election, and
- 4) Fifty randomly selected BOD printed ballots that were marked spoiled on Election Day from six separate Maricopa County vote centers chosen by her representative.

The Defendants correctly emphasize that “election contests are purely statutory,” *see Grounds v. Lawe*, 67 Ariz. 176, 186 (1948), and so are dependent on statutory provisions for their conduct, *see Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966). Arizona’s election contest statutes provide that, “[a]fter the statement of contest has been filed and the action is at issue, either party may have the ballots inspected before preparing for trial.” A.R.S. § 16-677(A). To do so, the applying party must “file with the clerk of the court a verified petition stating that he cannot properly prepare for trial without an inspection of the ballots. A.R.S. § 16-677(B).

The Defendants do not challenge that Plaintiff “stat[ed]” in her petition “that [s]he cannot properly prepare for trial without an inspection of the ballots,” *see* A.R.S. § 16-677(B), but they argue she still fails to meet that statutory requirement because ballot inspection cannot help her prepare to prosecute the specific allegations of her election contest, and the legislature intended that ballot inspection should only be allowed “when such inspection *really is necessary*” to prepare for trial. They support this assertion of the legislature’s intent by noting that Arizona law generally prohibits public inspection of ballots and that statutory grounds to contest elections that involve ballots include challenges to information included on ballots. *See* A.R.S. § 16-672(4) (on account of illegal votes) and (5) (erroneous count of votes).

The Defendants correctly argue that giving effect to legislative intent is a basic tenet of statutory construction, but Arizona courts do so first by looking to the statutory language itself. *Baker v. University Physicians Healthcare*, 231 Ariz. 379, 383 ¶ 8 (2013). When the language is “clear and unambiguous[] and thus subject to only one reasonable meaning,” courts apply the language without using other means of statutory construction. *Id.* Section 16-677(B) requires only a statement that the petitioner cannot properly prepare for trial without an inspection of ballots.

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The legislature may have intended the higher standard argued by the defendants, but this court cannot read into Section 16-677(B) anything “not within the manifest intention of the legislature as gathered from the statute itself.” *See City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965). Because Plaintiff represents that she requires this inspection to prepare for trial, she meets this requirement.

Plaintiff’s specific inspection requests (1), (2), and (4) are for a limited number of ballots unlikely to unduly burden Maricopa County or require much time before trial to complete. They are requests for ballot inspections as the statute requires. However, request (3), for inspection of early ballot envelopes, moves beyond the statutory scope of permitted inspection. Early-ballot return envelopes are not themselves ballots, even if they arrive as a “package” as Plaintiff argues. The defendants are correct that ballots—unlike the return envelopes—do not contain signatures. Indeed, they cannot, as the Arizona Constitution requires that “secrecy in voting shall be preserved,” by any voting method prescribed by the legislature. *See* Ariz. Const. Art. 7 § 1. Thus, inspection request (3) is denied because it is not authorized by the inspection statute and such an inspection would violate the Arizona Constitution. Plaintiff is entitled to her other three requests.

III. Further Requirements and Scope of Relief

The requirements of Section 16-677(B) do not end with Plaintiff’s representation of necessity. The party applying for inspection must also “file with the petition a bond, approved by the clerk, with two sureties, in the principal amount of three hundred dollars, conditioned that he will pay the costs and expenses of the inspection if he fails to maintain the contest.” At this point, the court does not know if Plaintiff has complied with this statutory requirement.

If Plaintiff complies, the court must “appoint three persons, one selected by each of the parties and one by the court, by whom the inspection shall be made.” A.R.S. § 16-677(B). The petitioner must be in full compliance with the bonding and inspector selection requirements before proceeding with inspection.

In her objection, the Secretary argued separately that the petition for inspection should be denied “because discovery should not be granted in connection with an invalid election contest.” The Court agrees with Secretary Hobbs that an election contest—as any other kind of legal action—must meet threshold pleading requirements to proceed.” However, the matter at issue here is Plaintiff’s petition to inspect, not the underlying election contest. The Defendants have filed motions to dismiss that are currently being litigated. The court will rule on the sufficiency of Plaintiff’s verified statement of election contest after due consideration of all parties’ briefing on the matter and expresses no view of the weight or sufficiency of the evidence to be provided through Lake’s proposed statistical analysis.

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This court must also be sensitive to the strict statutory deadlines for the trial of an election contest. *See* A.R.S. § 16-676(A)-(B). Recognizing that Defendants are confident in their position, the court nonetheless cannot put off all pre-trial discovery on the expectation that the contest will be dismissed. The court is also concerned with preventing any disruption or delay to any ongoing recount pursuant to A.R.S. § 16-661 et seq. *See State ex rel. Montgomery v. Brain*, 244 Ariz. 525, 527, ¶ 7 (App. 2018) (when a case involves the intersection of multiple statutes a court must give meaning to all provisions).

IT IS ORDERED that Lake's petition to inspect is granted as to requests (1), (2), and (4) subject to the following conditions:

- 1) Plaintiff files with the clerk of the court a bond in accordance with the requirements of A.R.S. § 16-677(B) and submits the name and contact information of her chosen ballot inspector by 12:00 p.m. on Friday, December 15, 2022, and simultaneously files a notice confirming payment of the bond with the court by email, copying all other parties.
- 2) The inspection does not in any way disturb the integrity of any ballots or their storage or maintenance in the custody of Maricopa County, or disclose the identity of any voter as connected to any given ballot; and
- 3) The inspection does not in any way interfere with any ongoing recount of the 2022 election results.
- 4) That the inspection shall begin at 8:00 a.m. Tuesday, December 20, 2022.
- 5) That this order authorizing an inspection is automatically vacated if the court dismisses Plaintiff's verified petition statement in its entirety following full briefing on the motion to dismiss.

IT IS FURTHER ORDERED that the Maricopa County Defendants provide to the clerk of the court the name and contact information of their preferred ballot inspector by 12:00 p.m. on Friday, December 15, 2022.

IT IS FURTHER ORDERED that the Maricopa County Defendants provide to the court the name of a proposed inspector for the court to name as its representative pursuant to A.R.S. § 16-677(B) by 12:00 p.m. on Friday, December 15, 2022.